Prentice-Hall, Inc. *and* District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO

Maxwell Macmillan Professional and Business Reference Division of Macmillan Information Company, Inc. *and* District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO. Cases 22–CA–15767 and 22–CA–16655

January 17, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On February 22, 1991, Administrative Law Judge Steven Davis issued the attached decision. The General Counsel and the Charging Party filed exceptions and a supporting brief, and Respondent Maxwell Macmillan filed cross-exceptions and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order.

[1] Respondent Maxwell Macmillan subpoenaed contracts between the Union and other employers in order to demonstrate that its bargaining proposals are not indicia of bad-faith bargaining. Respondent Maxwell Macmillan excepts to the judge's quashing the subpoena. In light of our dismissal of the bad-faith bargaining allegations, we find it unnecessary to pass on this exception.

[2] In adopting the judge's finding that Respondent Prentice-Hall's failure to provide requested information concerning part-time employees of Prentice-Hall Law & Business, we note the uncontradicted testimony of Union Steward Klutkowski on this subject. The Union advised the Respondent that it was requesting the information because some unit members reportedly were to be transferred to and working under the managers at the Law & Business operation. Inasmuch as the definition of part-time employees and their benefits were active bargaining issues, the Union sought information on the use of part-time employees at the new location. We find that the requested information relates to ongoing negotiations affecting unit employees.

The complaint does not allege, and the judge does not find, that the Respondents implemented their final merit pay offer in violation of the Act under the Board's analysis in *Colorado-Ute Electric Assn.*, 295 NLRB 607 (1989), enf. denied 939 F.2d 1392 (10th Cir. 1991). Accordingly, we do not consider this issue.

The complaint alleges, and Respondent Maxwell Macmillan admits, that Maxwell Macmillan bought the Prentice-Hall operation in question with knowledge of the potential liability to remedy unfair labor practices and is a successor to Prentice-Hall with regard to the liability issue. We also note that the judge's decision holds Respondent Maxwell Macmillan liable for remedying the violation. Accordingly, we find it unnecessary to pass on the General Counsel's exception that the judge failed to make a specific finding under *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Prentice-Hall, Inc. and Maxwell Macmillian Professional and Business Reference Division of Macmillan Information Company, Inc., Paramus, New Jersey, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER OVIATT, dissenting.

I concur with my colleagues in affirming the judge's dismissal of most of the allegations here. However, I would also dismiss the allegation concerning the Respondent's declining to furnish the Union with information concerning a separate unit that the Union does not represent.

If the Union were seeking the information for the purpose of bargaining over transfers or the effects of transfers on unit employees, I would agree that the General Counsel had established the Union's need for at least some of the requested nonunit information. But that is not the case here. And the possible relationship between information about nonunit employees—whom the Union did not represent—and any necessity for that information in the context of bargaining over a successor collective-bargaining agreement for the employees that it *did* represent here is simply too attenuated in my view to support a finding that the Respondent violated the Act by declining to furnish the information about nonunit employees. Accordingly, I would dismiss the complaint in its entirety.

Gary A. Carlson, Esq., for the General Counsel.
Peter D. Conrad, Esq. (Proskauer, Rose, Goetz & Mendelsohn, Esqs.), of New York, New York, for the Respondent Prentice-Hall.
Herbert J. Levine and *Jill L. Rosenberg, Esqs. (Baer Marks & Upham, Esqs.)*, of New York, New York, for the Respondent Maxwell Macmillan.
Dean Hubbard, Esq. (Eisner, Levy, Pollack & Ratner, PC), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to charges filed by District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO (Union), in Case 22–CA–15767 on June 9, 1988, against Prentice-Hall, Inc. (Prentice Hall), and a first amended charge filed against Prentice-Hall on July 27, 1988, and a charge in Case 22–CA–16655 filed by the Union on November 21, 1989, against Maxwell Macmillan Professional and Business Reference Division of Macmillan Information Com-

pany, Inc. (Macmillan), a consolidated complaint was issued against Respondents on January 12, 1990.[1]

The complaint alleges essentially that Respondent Prentice-Hall violated Section 8(a)(5) and (1) of the Act, and refused to bargain with the Union by certain specific conduct, in which it is alleged that Prentice-Hall:

> (a) made proposals which gave it the unilateral right to change the holiday schedule and sick leave, personal day, bereavement leave, and benefits programs, and to reduce the number of paid sick days, personal days, and bereavement leave days
>
> (b) made proposals which gave it unfettered discretion with respect to salaries
>
> (c) made proposals which were regressive in that they eliminated compensatory time, the arrive late/leave early policy and all benefits for part-time employees, and provided for no wage increases in the first and second years of the contract
>
> (d) failed to provide the union with information which the union requested regarding the hiring of part time employees, and failed to respond adequately to the Union's request for information about a child-care program and
>
> (e) implemented its final contract proposals without having afforded the Union an opportunity to negotiate and bargain, in the absence of a valid impasse.

The complaint further alleges that Prentice-Hall violated the Act by its overall acts and conduct, including the conduct alleged above. The complaint also alleges and Macmillan admits, that in October 1989, Macmillan purchased a portion of the business of Prentice-Hall, and since then has continued to operate the purchased portion in basically unchanged form. Macmillan further admits that it has continued the employing entity with notice of Prentice-Hall's potential liability to remedy the unfair labor practices alleged in the complaint, and also admits that it is a successor of Prentice-Hall.

Respondents' answers denied the material allegations of the complaint, and on March 21–23, and May 23, 1990, a hearing was held before me in Newark, New Jersey, and New York City, on these allegations. On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and Respondent Macmillan, I make the following

FINDINGS OF FACT

I. JURISDICTION

Prentice-Hall, a corporation, having its office and place of business in Paramus, New Jersey, has been engaged, until October 1989, in the publication, sale, and distribution of books and other printed material. Annually, Prentice-Hall received at its New Jersey facility goods and materials valued in excess of $50,000 directly from points outside New Jersey. Prentice-Hall admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] Macmillan's name was amended at hearing.

Macmillan, a corporation, having its office and place of business in Paramaus, New Jersey, purchased a portion of the business of Prentice-Hall in October 1989, and has continued to operate the purchased portion in basically unchanged form. Annually, Macmillan will receive at its New Jersey facility goods and materials valued in excess of $50,000 directly from points outside New Jersey. Macmillan admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the successor of Prentice-Hall.

Respondents admit, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

In 1979, the Union was certified by the Board as the representative of the employees of Prentice-Hall in the following, admitted collective-bargaining unit:

> All Prentice-Hall information Division Editors employed by the Employer in its Information Services Division, excluding all office clerical employees, production employees, managerial employees, guards, and supervisors as defined in the National Labor Relations Act, editorial assistants and all other employees.

The unit employees consist of law school graduates, called legal editors, and nonlaw school graduates, called nonlegal editors. They receive texts of laws, case decisions, and other materials. The editors analyze the data received, prepare digest entries of them, and write analyses of the material, which are included in the loose-leaf services of the Company and distributed to subscribers.

There are about 10 departments employing these editors, including Federal tax, state, and local tax, and labor. At the time of the hearing, about 50 employees were employed in the unit.

Prentice-Hall and the Union entered into three successive collective-bargaining agreements: in 1980, 1982, and 1985. The last contract expired on January 31, 1988. The issues in this case relate to the negotiations for a renewal agreement to replace the expired contract.

During the negotiations, this unit comprised employees who were employed by Prentice-Hall. Prentice-Hall was encompassed in the Simon & Schuster division of Gulf & Western, Inc. That division employed about 9000 employees.

In October 1989, Respondent Macmillian purchased certain assets of Prentice-Hall, including the business involved. Simon & Schuster Company, which owns Macmillan, is owned by Gulf & Western, Inc. In October 1989, because of the purchase of Prentice-Hall, the admitted appropriate collective-bargaining unit became:

> All editors employed by the Maxwell Macmillan Professional and Business Reference Division at its Paramus, New Jersey facility, excluding all office clerical employees, production employees, managerial employees, guards, and supervisors as defined in the National Labor Relations Act, editorial assistants and all other employees.

Macmillan admits that since October 1989, the Union, by virtue of Section 9(a) of the Act has been and is the exclusive representative of the Macmillan unit for the purposes of collective bargaining.

B. *The Negotiations*

Eight bargaining sessions were held between January and June 1988. The Union's team consisted of Union Representative Pat Slesarchik, who was replaced by Conrad Lower in April, and Andrew Klutkowski, the chief shop steward, and five unit employees. Respondent Prentice-Hall's team was comprised of Joseph Kelly and Richard Lupi, the vice president of human resources, and the director of human resources for Simon & Schuster, respectively, and also Andrea Smith and Donald Mindrebo, the labor relations coordinator and director of editorial operations at Prentice-Hall, respectively.[2]

The recitation of the bargaining sessions has been taken from the testimony of the two witnesses, Andrew Klukowski and Donald Mindrebo, the notes of the bargaining sessions, and the documents exchanged by the parties at the sessions.

The January 19 Bargaining Session

The Union presented its demands, which would modify the parties' expiring contract. The demands were as follows:

(a) Probationary period—probationary employees not accepted as permanent employees are entitled to 2 weeks' notice of termination, or pay in lieu of such notice.

(b) Holidays—Add Dr. Martin Luther King Jr.'s Birthday and Veterans Day.

(c) Hiring Salary—When a new employee is hired at a salary greater than that received by a current employee in the same job classification, the salary of the current employee shall be raised to that of the newly hired employee.

(d) Termination—Provide that an employee whose job performance is unsatisfactory due to a substance abuse problem must obtain treatment and be given an opportunity to recover. If his performance does not improve, he is subject to termination pursuant to the contract.

(e) Salaries—Effective February 1, 1988, increase salaries 15 percent or $3500 per year, whichever is greater, and on February 1, 1989, increase salaries 12 percent or $3000 per year, whichever is greater.

(f) Minimums—Increase all minimums by the amount of the wage increase. Add an additional level—Editor IV, Legal and Non-legal.

(g) Add a union-shop clause.

Union spokeswoman Slesarchik briefly described the proposals and gave reasons for seeking them. Employer spokesman Kelly questioned her as to some of the proposals, including probationary period, starting salaries, and termination of employment. He also questioned the need for a union shop. Kelly stressed the fact that the unit is comprised of individuals who were professionals, and professionalism was an important part of the negotiations concerning them.

The January Bargaining Session

Respondent made its contract proposals. They included the following, in relevant part:

(a) Union Stewards and Local Officers—Reduce from four to one, the number of union local officers of the Publishing Local. The proposal retains the language in the contract providing for four union stewards, but the proposal adds that if a steward becomes a local officer, he will not be eligible to conduct grievances.

(b) Seniority—Provides that a laid-off employee shall be entitled to recall for a job opening not more than 6 months after the date of layoff. The expired contract provided that the employee was entitled to recall for a period of 9 months after his layoff.

(c) Holidays—The proposal stated that Respondent observes 10 paid holidays per year, without enumeration. The proposal added that a schedule of holidays would be issued by Respondent prior to the beginning of each calendar year. The expired contract set forth eight paid holidays, and stated that other holidays may be added as designated by Respondent. In practice, the unit employees enjoyed 9 to 11 paid holidays per year.

(d) Sick Leave—The expired contract provides that employees are entitled to 6 paid sick days per year, and that employees may ''bank'' any sick days not taken in prior years, and use them in subsequent years. The proposal eliminates the ''banking'' entitlement, and requires that any sick leave entitlement must be used or lost in the year it is earned. The proposal also requires, at the discretion of Respondent, medical proof for all absences.

(e) Personal Days and Bereavement Leave—The expired contract and the proposal provide for 3 paid personal and 3 paid bereavement days per year. The expired contract provides that these are the current programs of the Respondent, and that any changes thereto will apply to the employees, but nevertheless, not less than 3 paid personal and bereavement days will be given to employees. The proposal eliminates that guarantee language.

(f) Vacations—Respondent stated that this proposal contained the same vacation benefits as set forth for all employees in the company handbook which applied to all other employees of Respondent. The proposal is essentially the same as that set forth in the Simon & Schuster Employee Handbook, dated February 1987.

(g) Professional Certification—The 1985 agreement provided that employees taking professional certification examinations are entitled to 4 days off with pay. Respondent's proposal limits this benefit to those taking the Bar examination for the first time, who are not already a member of the Bar.

(h) Benefits—Respondent proposed that the Prentice-Hall profit sharing plan be replaced by the Gulf & Western One Plus Benefits program. Prentice-Hall is no longer the employer. This is a total One Plus Benefits Package to replace the profit sharing and medical plan. The proposal also stated that ''no matter respecting these benefits . . . shall be subject to the grievance and arbitration provisions of this Agreement.''

(i) Hours of Work and Compensatory Time—The expired collective-bargaining agreement provided that employees who worked in excess of 7-1/2 hours in a day, or on Saturday, Sunday, or a holiday, is entitled to compensatory time on an hour-for-hour basis, for such excess hours. The contract also provided that employees may arrive late (before 10:15 a.m.) or leave early (after 3 p.m.) with approval, without loss of pay, not to exceed six times per year. Respond-

[2] Hereafter Prentice-Hall will be referred to as Respondent.

ent's proposal eliminates compensatory time and the arrive late–leave early benefits.

(j) Salaries—Respondent proposed a wage freeze in the minimum, midpoint, and maximum salaries for the first 2 years of the new contract, and an approximately 5-percent increase in the third year. In addition, its proposal eliminated a guaranteed 3-percent merit increase for those employees who fail to meet minimum performance requirements, and changed the percentage amount of merit increases that could be given. The proposal also eliminated a guaranteed merit fund, comprising 4 percent of the total annual salaries of employees.

(k) Part-time and Temporary Employees—Respondent's proposal defined part-time employees as those who are scheduled to work more than 20 hours per week but less than 35. The expired contract states generally that part-timers are those who work less than 35 hours, and also provides that part-time employees who worked 900 or more hours per year (more than 19 hours per week based on a 52-week year) were entitled to vacations and holidays pursuant to a formula depending on the number of hours worked. Hospitalization and medical and surgical insurance was entirely paid by Respondent for part-time workers who worked 25 or more hours per week.

The proposal provides that part-time employees are eligible to participate in the Gulf & Western One Plus program. The proposal eliminated their participation, as set forth in the expired contract, in the Prentice-Hall Part-Time Benefit program, which included the above insurance programs.

(l) Grievance and Arbitration—Respondent's proposal reduced from 15 to 10, the number of days within which (i) a grievance may be brought, (ii) the Union must submit a written grievance, and (iii) either party may submit the matter to arbitration after receiving a response to step 2. Respondent stated that this would expedite the grievance process. The Union replied that it would lead to more grievances.

(m) Other Benefits—Respondent's proposal substituted certain Gulf & Western benefits for those provided by Prentice-Hall.

The Respondent's proposals were explained and discussed. As to the major sources of disagreement, the Union insisted on retaining the ''banked sick days'' as set forth in the expired contract. Respondent replied that with the Gulf & Western One Plus program, banking was unnecessary. The Union argued that inasmuch as the One Plus short-term disability coverage only began after an employee was sick for more than 6 consecutive days, those initial 6 days would be unpaid, unless the editor had ''banked'' 6 sick days from prior years.

The Union also wanted to retain the compensatory time provisions of the expired contract. Respondent stated that the employees are professionals. The Union replied that without compensatory time, they would be expected to work past their regular hours without compensation. Respondent replied that their longer hours of work would be reflected in their performance evaluations. The Union noted that one department would be favored in performance appraisals and merit increases because that department received more work. Historically, the Federal tax department is called on to work beyond the normal workday. Respondent invited the Union to submit language to modify this proposal.

The Union also argued that regarding salaries, too much discretion was given to Respondent. Respondent rejected the Union's salary proposal as being too high, and also rejected its proposal for a union-shop clause. The Union refused to agree to Respondent's proposals.

The January 28 Bargaining Session

The Union agreed to Respondent's seniority proposal, the vacation proposal, the ''benefits'' proposal, the educational aid proposal, and the union local officers proposal, as modified. The parties also agreed to the professional certification proposal with the understanding that Respondent would agree that it would grant time off with pay for two employees who were scheduled to take the bar examination for the second time.

The Union insisted on retaining the compensatory time benefit. Respondent stated that it wanted a merit system, and would not agree to continue compensatory time. Respondent argued that the compensatory time, and arrive late-leave early provisions are not professional. In response, the Union said that it would not agree that people work without being paid. Union security was discussed, with Respondent stating that it should not force employees to join the Union, or require the payment of dues. The Union withdrew its offer for a union-security clause, and instead proposed an agency shop. Respondent continued to assert that it should not force people to pay to join a union, and refused to agree to an agency shop clause.

The Union presented its salary counteroffer, which included a $2800 market adjustment for all employees hired before February 1987. The proposal also raised the percentage merit increases from the expired contract. In addition, the offer proposed a raise in the minimum guaranteed increase from 3 to 6 percent. Respondent called the counteroffer too high, and said that if it agreed to that proposal it might have to reduce benefits.

Respondent stated that it wanted a total merit system. The Union said it needed a guaranteed increase, and a merit system in addition to the guaranteed raise.

The Respondent rejected the Union's proposal regarding probationary employees.

Respondent made a counteroffer relating to salaries. It proposed annual performance evaluations, and that ''at the sole discretion of the Employer, adjustments to salary may be made consistent with the overall merit system of rewarding performance. These salary adjustments may be made in such amounts and with such frequency as deemed necessary by the Employer.''

The April 6 Bargaining Session

A discussion as to various issues took place. Respondent rejected the Union's holiday proposal and stated that, as to its part-time and temporary employee proposal, it wanted the same policy for this unit that it had in the rest of the Company. As to compensatory time, Respondent said that it wanted to eliminate that benefit because it was difficult to administer, and was ''self-defeating'' because the employees utilizing such time were the most diligent workers because they worked longer hours. Respondent argued that by giving them compensatory time, their labors would be lost when they took that time. Respondent suggested that paying em-

ployees for this time, rather than permitting them to take time off might be a better approach. Respondent also said that it wanted to eliminate sick day banking because the short-term disability provisions in the One Plus program eliminated the need for banking. The Union mentioned, again, that such a program only began after the employee was sick for 6 consecutive days. The Union explained that if an employee was sick for several 2- to 3-day illnesses, he would not have any days ''banked'' for use before the 6-day short-term disability benefit became effective.

Respondent explained that it was opposed to continuing the arrive late-leave early contractual clause because it wanted the unit employees to be subject to its companywide policy, which is that employees could request time off for an emergency, and department heads could grant such request at their discretion. Respondent added that the clause was in the contract to ''see how it worked.'' Respondent claimed that there was an ''abuse'' of that clause, but would not elaborate. The Union expressed reluctance to rely on the discretion of supervisors, where a personality conflict might influence a supervisor to improperly deny such a request.

Regarding part-time employees, Respondent's proposal provided that parttimers working 20 or more hours per week were entitled to receive five holidays, vacations, and participation in the One Plus program. The Union expressed concern that Respondent might hire part-timers to work for 19 hours per week, thereby avoiding providing benefits for them. It was explained that there was only one part-time employee then employed in the unit.

General Counsel witness Klutkowski, who appeared at the negotiations in behalf of the Union, stated that the Union's salary counteroffer made on January 28 was apparently withdrawn, and its first written proposal, made on January 19, was the offer that was extant.

The April 12 Bargaining Session

Respondent stated that the arrive late-leave early contractual provision had created a burden in recordkeeping, and that supervisors would use their discretion, including considering the employee's work load and production record, in acting on such a request. Respondent objected to retaining a set number (6) of such days permitted to employees. Respondent mentioned that that clause has been abused by employees leaving early without telling their supervisor, or giving very short notice. The Union objected to employees having their requests considered by supervisors who may dislike them. Respondent said that it wished to run the unit as a professional unit. Respondent stated that that provision was intended to be used for emergencies and is not an entitlement. The Union disputed this.

Respondent also stated that the One Plus program eliminated the need for sick day banking. The Union disputed this, using the argument set forth in the previous meetings, that the short-term disability provisions of that program become effective only after 6 consecutive days of illness.

Regarding sick day, personal day, and bereavement leave, the expired contract provided these benefits to the unit employees to the same extent as provided to the other nonbargaining unit employees at Simon & Schuster. Approximately 9000 such employees are covered by that program. In addition, the expired contract stated that any changes in the programs would also apply to the unit employees. However, the contract noted that the number of personal, sick, or bereavement days allowed each year would not be reduced. In this negotiation, Respondent sought to eliminate the guaranteed number of days. Respondent defended its proposal to eliminate a guaranteed number of personal, sick, and bereavement days on the ground that the rest of the Company did not have this benefit. Respondent sought ''flexibility'' in administering the leave program for the whole Company. Respondent assured the Union that it would not change the benefits for 9000 employees just to ''punish'' the unit members. Respondent rejected the offer of flextime on the same ground. The Union insisted that the guarantees were important to the employees.

Respondent rejected the Union's other proposals concerning probationary employees and holidays (adding Martin Luther King's birthday).

While Respondent again rejected the issue of flextime, it invited a union proposal on the issue, which it agreed to consider.

The May 5 Bargaining Session

The Union requested a copy of the child-care program at Paramount, a subsidiary of Gulf & Western. The Union sought that information because its proposals concerning arrive late-leave early, and compensatory time and sick day banking were related to possible child-care issues. Also the Union sought the information because Respondent was basing many of its proposals on the fact that it wanted policies which were uniform throughout the Company. Respondent replied that if possible it would bring the Paramount plan to the next meeting.

The Union offered a revised compensatory time proposal, which provided, in part, that an employee could be paid instead of receiving time off, for hours worked beyond normal working hours. The Union also proposed a revision to the arrive late-leave early clause. That proposal provided that full-time employees may receive time off for emergencies with the approval of their supervisor, and such approval shall not be unreasonably denied. However, that proposal was ''contingent upon an agreed upon flextime provision.'' As will be noted, infra, the Union's flextime proposal at the next session was rejected by Respondent.

The Union also proposed to modify the sick leave banking proposal so that employees could have sick days available during the 6-day period before the One Plus program's benefits become available.

Respondent defended its total merit policy of wage increases, saying that it would not continue its practice of raising wages based on seniority or longevity. It also explained that if there was no difference between the top performer and the bottom, the same wage raise would discourage the top performers, cause loss of morale among management, and bring employees to the lowest common denominator. Respondent added that a merit system attracts and retains the best performers. The Union argued that merit systems do not work.

On April 27, the president of Simon & Schuster announced that effective immediately, the nontax publications and services of Prentice-Hall would be transferred to a new organization, Prentice-Hall Law & Business, located in Clifton, New Jersey, which had been acquired by Gulf & Western.

May 19 Bargaining Session

A Federal mediator was present at this session. The meeting began with the Union's offer to compromise, and make concessions in its offers. It made a flextime offer of 9:45 a.m. to 3 p.m. core, and 7:45 a.m. to 5:30 p.m. regular workday. The Union said that this offer would eliminate the arrive late-leave early clause in the contract which Respondent sought to eliminate. Respondent objected. The Union objected to Respondent's proposal that employees may be required to present a doctor's note when they take sick leave. The Union added that the employees have a right to use the 6 sick days set forth in the expired contract.

As to sick leave, the Union said it would consider a limited banking period to cover the 6-day lag in receiving the short-term disability coverage under the One Plus plan. With respect to other benefits, the Union insisted on retaining the present benefits. As to holidays, the Union withdrew its request for Veterans Day, but wanted Martin Luther King Day as a paid holiday. The Union also continued its request that current employees' salaries be raised to that of newly hired workers. The Union also continued to seek an agency shop.

The Union made a new salary offer. It asked for ''decent'' raises for everyone, and merit increases on top of the across-the-board raises. The Union also reduced its salary demand from 15 to 12 percent in the first and second years, and 11 percent in the third year. The Union also requested a market adjustment of $700 per year for each year before 1987, with a cap of 10 years. Respondent rejected this salary offer.

Respondent rejected the Union's above proposals. It defended paying more to new hires on the ground that it sought the best graduates to upgrade its staff, and supported its merit wage proposal on the ground that it sought to give more money to those working harder. It also stated that it would provide the benefits to this unit that it has provided to its 9000 other employees.

Respondent explained that the Union's flextime proposal would require Respondent to add 2 hours each day to managers' schedules. As to personal and bereavement days, Respondent had proposed to give the unit employees the same benefits its 9000 other employees receive.

Respondent called the Union's wage offer ''insulting.'' It explained that this offer would result in a $5000 and $10,000 increase to two employees. The Union responded that its longevity and market adjustment proposal amounted to 3 percent in the first year. The Union answered that Respondent's offer was a zero wage proposal, adding that under the merit system, employees would have to trust management to evaluate them fairly.

The Union accused Respondent of not having moved on any of its proposals. Respondent said that there would be movement if the Union was reasonable, asserting that the Union's latest wage offer was higher than the first offer made in January.

The Union renewed its request for the Paramount childcare program. Respondent said it had not received it.

June 2 Bargaining Session

This session was attended by a Federal mediator.

Respondent opened the meeting by responding to the Union's proposals which were still open. It accepted the Union's proposal for a 2-week notification to probationary employees not accepted as permanent workers. Respondent adhered to its earlier proposals as to holidays, sick leave, personal days, bereavement leave, hours of work, part-time and temporary employees, some minor variation in the grievance and arbitration filing times, and other benefits.

The Union stated that it tentatively agreed to Respondent's proposals as to: other benefits, holidays, probationary employees, and term of agreement.

As to salaries, Respondent reoffered the same salary proposal as previously, but modified certain language concerning hiring rates, promotion increases, annual performance evaluation, and that adjustments to salaries are made at the sole discretion of the employer, consistent with its merit system of rewarding performance, and also that salary adjustments, consistent with the overall merit system of rewarding performance, may be made at any time in any amount as deemed necessary by the Respondent. Respondent called this its final offer.

The Union accused Respondent of making no concessions. Nevertheless, the Union tentatively agreed to Respondent's proposals concerning other benefits, holidays, probationary period, and term of agreement.

Regarding part-time employees, the Union suggested that Respondent might hire such workers to work less than 20 hours per week, and in that way avoid giving them any benefits. The Union sought information as to how many part-time employees were employed in Prentice-Hall Law & Business. Respondent replied that no unit employees worked in Law & Business at that time and that it would consider the Union's request for information, although it believed that it was irrelevant. The Union said that that information was preventing them from reaching agreement since benefits for part-time employees was important.

The Union again requested compensatory time. Respondent answered that overtime would be recognized in an employee's performance appraisal. Respondent added that given the Union's salary offer, compensatory time is economically unfeasible.

The Union proposed a sick day bank of 6 days. In the expired contract, an unlimited number of banked days was permissible. Respondent rejected sick leave banking, calling it an ''administrative nightmare'' to record sick leave for employees, and unnecessary under the One Plus program.

The Union offered to accept Respondent's personal days and bereavement leave proposal if it agreed that the current benefits enjoyed would not be reduced. Respondent rejected that offer, saying that it wanted to keep its options flexible and be consistent with the rest of the Company.

The parties discussed salaries, with the basic dispute continuing to be the Union's insistence on a guaranteed increase, and Respondent's demand that salary increases be totally merit-based. Respondent noted that the Union's May 19 offer of market adjustment called for a payment of $150,000. The Union disputed this, saying that the market adjustment amounted to only $74,000. Later it admitted that its figures were wrong. The Union admitted that it had not costed out its proposal. It then withdrew that proposal.

The Union then asked if Respondent would reply to its other proposals. Respondent replied that it could not take the Union seriously if it made a serious mistake in arithmetic. Respondent added that it made a ''very fair proposal'' which

included additional money. Respondent then announced that they have ''reached the point of impasse.''

Subsequent Events

On June 9, Respondent sent a letter to the Union which stated:

> This letter is to confirm that the Company's final offer was presented to you on June 2, 1988. We will implement this final offer effective June 20, 1988.

Macmillan's answer admits that it implemented its final contract proposals pertaining to union stewards and local officers, seniority, holidays, sick leave, personal days, bereavement leave, vacations, professional certification, benefits, hours of work and compensatory leave, salaries, part-time and temporary employees, grievance and arbitration, other benefits and probationary period. As a result of the implementation of the final offer, some employees received no merit increases.

Thereafter, Respondent applied the terms and conditions of employment in its Simon & Schuster Employee Handbook to its bargaining unit employees.

Employee Klutkowski testified that Respondent did not provide the Union with requested information concerning the Paramount child-care program, or concerning the hiring of part-time employees employed in Prentice-Hall Law & Business. Klutkowski testified that the Union wanted that information because he learned that nontax department employees were being hired in Law & Business.

Analysis and Discussion

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by making certain proposals, by failing to provide the Union with information, by engaging in certain overall acts and conduct, and by implementing its final contract proposals in the absence of a valid impasse.

The Proposals

A proper analysis of these allegations must begin with a discussion as to whether, by making certain proposals, Respondent violated the Act.

General Counsel alleges that Respondent unlawfully made proposals which gave it the unilateral right to change the holiday schedule and sick leave, personal days, bereavement leave, and benefits programs, and to reduce the number of paid sick days, personal days, and bereavement leave days.

Respondent proposed 10 holidays in the negotiations. The expired contract provided for 9 to 11 holidays. It is the alleged change in the holiday schedule, however, which is charged as being violative of the Act. The change consists of a statement in the proposal that the Respondent would issue a schedule of holidays prior to the beginning of each calendar year. The expired contract enumerated which holidays would be observed. I fail to see how this change, which simply consists of a statement that the holiday schedule would be issued rather than set forth specifically in the contract, constitutes the unilateral right to change the holiday schedule. There is no evidence that Respondent sought to change the holidays traditionally observed. Apparently, the thousands of nonunit employees also receive 10 holidays, and Respondent would be unlikely to depart from the customary holidays for those employees as well. It should be noted that the Union agreed to Respondent's proposal, in toto, at the June 2 session. I accordingly find no violation in Respondent's making of its proposal concerning the holiday schedule.

With respect to the sick leave, personal days, bereavement leave and benefits programs, the Union had agreed, pursuant to the expired contract, to participate with the other thousands of nonbargaining unit employees at Simon & Schuster in those fringe benefit programs. The expired contract stated that those provisions ''represent the current Prentice-Hall . . . program. Any changes in that program made by the Employer during the term of this Agreement will also apply to the employees. However, in no event will the number of paid [sick, personal, or bereavement] days be less than as provided [in the contract].'' Respondent sought to change the guarantee language in the contract in order to remove the guaranteed paid days provided to the unit employees. Respondent sought the elimination of the guaranteed paid days on the ground that the rest of the Company's employees did not receive that benefit. Specifically, with respect to personal and bereavement days, employees are guaranteed 3 paid personal and 3 paid bereavement days. It should first be noted that Respondent sought to make uniform among all its employees the personal day and bereavement day policies. By eliminating the guaranteed days, Respondent does not eliminate the benefit itself. The employees, under the proposal, remain entitled to the number of paid personal and bereavement days set forth in the expired contract, which were continued in Respondent's proposal in these negotiations. It is also important to note that in the expired contract the Union agreed that if any changes were made by the Respondent in those provisions during the term of the contract, such changes would be applied to those contractual terms. As the Board stated in *Roman Iron Works*, 275 NLRB 449, 452 (1985):

> [C]ollective bargaining is basically a two-way street. Thus while a union may lawfully make demands designed to improve existing employee wages and benefits, there is nothing in the Act which denies an employer the right, for its part, to demand givebacks. Where the parties are negotiating to replace a prior contract, neither side is precluded from seeking modifications to its own advantage. The Act simply does not preclude an employer from demanding that various provisions of the old contract be modified, altered, or even eliminated.

With respect to the sick leave issue, Respondent's proposal eliminated the sick day ''bank'' of unused sick days. Respondent explained that it believed that the ''bank'' was no longer needed because of the employees' participation in the Respondent's One Plus program which provided for short-term disability. However, the Union argued during negotiations that that program did not cover illnesses of less than 5 days' duration. Respondent did not refute that claim. Nevertheless, although the Union may have been correct in arguing that a ''gap'' of short illnesses would not be covered by the One Plus program, the issue here is the lawfulness of Respondent's proposal that the ''bank'' be eliminated. I see

nothing unlawful in the proposal itself. *Roman Iron Works*, supra.

Concerning the proposal which allegedly gave Respondent the unilateral right to change the benefits programs, this is apparently a reference to the benefits proposal, relating to article XXIII of the contract. In that proposal, Respondent offered to continue to provide the health, welfare, capital accumulation and retirement benefits in accordance with the Gulf & Western One Plus Benefits program. The proposal also stated that these provisions were not subject to the grievance and arbitration provisions of the contract. It is that language, apparently that General Counsel argues reserves to Respondent the unilateral right to change the programs. The expired contract, however, contained identical language. That contract, of course, did not provide for the One Plus program because it was not yet implemented at the time the contract was executed, but that contract's provisions for profit sharing, medical and life insurance benefits, and individual retirement account all contain the statement that matters concerning them shall not be subject to the grievance and arbitration provisions of the contract. In addition, Respondent's benefits proposal was accepted by the Union at the January 28 bargaining session. I accordingly find no violation in Respondent's making of this proposal.

The complaint also alleges that Respondent made proposals which gave it ''unfettered discretion'' with respect to salaries. Throughout the negotiations, Respondent sought to change the salary structure to a totally merit system of salary raises. The Union sought to retain a guaranteed increase if employees failed to meet the minimum requirements for the position. In the expired contract, that guaranteed increase was 3 percent. The Union sought a 6-percent guaranteed raise in this negotiation. Respondent's proposal provided that a merit increase be given to employees based on their annual performance evaluation, which is the ''determining factor,'' and that the merit increase would ''reflect'' the performance rating received. The proposal further stated that the amount of the increase was at the Respondent's ''sole discretion.'' During the negotiations, Respondent further proposed that at the ''sole discretion of the Employer, salary adjustments may be made consistent with the overall merit system of rewarding performance. These salary adjustments may be made in such amounts and with such frequency as deemed necessary by the Employer.'' The proposal also provided that matters concerning the merit increase, performance evaluations, and promotion decisions are not subject to the grievance and arbitration provisions of the contract.

General Counsel argues that Respondent's proposals giving it sole discretion over the amount of the increases and, with respect to the additional increases, whether and when such increases should be made, violate the Act.

In evaluating this argument, it is important to note that the proposal, in part, is identical with the expired contract, which states that ''the amount of merit increase granted to an employee shall be at the Employer's sole discretion.'' In addition, Respondent does not have ''unfettered discretion'' with respect to the merit increases because the proposal stated that the performance evaluation given to employees is a ''determining factor'' in the amount of the merit increase, if any, to be awarded, and it also required the Respondent to base its decision concerning a merit increase on an evaluation of the employee's performance. Although, according to the proposal, these matters are not subject to the grievance and arbitration provisions of the contract, an identical provision appears in the expired contract, to which the Union had agreed. In addition, guidelines were set forth in the proposal, which stated the percentage increase to be granted based on the performance evaluation. For example, the percentage increases, in the proposal ran from 0 percent for an unsatisfactory rating to 11 percent for an outstanding rating. In *Colorado-Ute Electric Assn.*, 295 NLRB 607 (1989), the Board found no violation in an employer's proposal of a similar merit wage proposal. Accordingly, I cannot find unlawful Respondent's making of this salary proposal.

The complaint also alleges that Respondent violated the Act by making proposals which were regressive, since they eliminated compensatory time, the arrive late-leave early policy, and all benefits for part-time employees, and provided for no wage increases in the first and second years of the contract.

As set forth above, the making of such proposals does not violate the Act. *Roman Iron Works*, supra. Moreover, during the negotiations, Respondent explained its reasons for seeking such concessions from the Union. For example, regarding the elimination of compensatory time, Respondent told the Union that the persons who were the recipients of compensatory time for the most part were those in the Federal tax department, who were so valuable to the Company that their services were needed when they were taking compensatory time. The Union was also told that the recording of compensatory time and maintaining records was burdensome. Regarding the arrive late-leave early policy, the Union offered a flextime proposal to replace the arrive late-leave early clause in the contract. Respondent rejected that offer since it would add 2 hours each day to managers' schedules. Respondent properly explained its opposition to the retention of the arrive late-leave early clause as being inconsistent with companywide policy permitting employees to request time off for an emergency. Respondent also maintained that that contractual provision had been abused by employees. As set forth above, Respondent's making a proposal to eliminate the arrive late-leave early provision does not violate the Act. *Roman Iron Works*, supra.

Regarding the alleged elimination of benefits for part-time employees, Respondent's proposal did not seek to eliminate benefits for such employees. Rather, the proposal sought to define part-time workers as those who worked at least 20 hours per week. The expired contract defined part-timers generally as those who worked less than 35 hours per week, but provided for hospitalization and surgical and medical benefits for those working at least 25 hours per week. In addition, those part-time workers who work more than 900 hours per year (more than 19 hours per week based on a 52-week year) were entitled to certain vacation and holiday benefits. Pursuant to the proposal, part-time employees were eligible to participate in the Gulf & Western One Plus program. Accordingly, those not classified as part-time workers did not qualify for that program. As set forth above, the making of this proposal did not violate the Act. *Roman Iron Works*, supra. In addition, the proposal was not regressive when viewed against the benefits for part-time employees contained in the expired contract as set forth above.

Regarding the allegation that Respondent made a regressive proposal which provided for no wage increases in the

first and second years of the contract, the proposal provided for no changes in the first 2 years of the contract in the minimum, midpoint, and maximum salaries. However, Respondent also proposed a merit system pursuant to which employees' salaries would be raised within those minimum, midpoint, and maximum ranges during the first 2 years of the contract. Accordingly, I find that no regressive proposal regarding salaries was made, as alleged in the complaint.

The Requests for Information

The complaint further alleges that Respondent failed to respond adequately to the Union's request for information concerning a child-care program, and failed to provide the Union with information that the Union had requested regarding the hiring of part-time employees in Prentice-Hall Law & Business.

At the May 4 bargaining session, the Union requested a copy of the child-care program at Paramount, a subsidiary of Gulf & Western. The Union sought that information because its proposals concerning arrive late-leave early, and compensatory time and sick day banking were related to possible child-care issues. Respondent said that if possible it would bring a copy of the program to the next meeting. It never produced that document.

Respondent argues, and I agree, that the child-care program is not relevant to the issues in the bargaining. The program sought by the Union involved a subsidiary of Respondent which was not an issue in the bargaining. The Union could have made proposals concerning a child-care program, but did not do so. The Union's claim that the Paramount program was somehow related to other issues being discussed at the negotiations such as arrive late-leave early and others is too remote a connection to find a violation as to Respondent's failure to provide a copy of the Paramount child-care plan.

The Union also requested information concerning the number of part-time employees employed in Law & Business which information was also not supplied by Respondent. As set forth above, on April 27, the president of Simon & Schuster announced that effective immediately, the nontax publications and services of Prentice-Hall were transferred to a new organization, Prentice-Hall Law & Business located in Clifton, New Jersey, which had been acquired by Gulf & Western. The unit at issue here consisted of nontax personnel. Respondent told the Union on June 2 that no unit employees worked in Law & Business at that time, and that the consolidation was still in the planning stages.

An employer's refusal to furnish to a union information which is relevant to the Union's proper performance of its collective-bargaining responsibilities is an unfair labor practice under Section 8(a)(1) and (5) of the Act. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Information concerning unit employees is considered to be presumptively relevant. However, information concerning employees outside the bargaining unit may only be sought once the union has demonstrated the relevance of such information.

Although at that moment there may have been no consolidation between the unit at issue here and Law & Business, the clear message, especially in light of the president's statement that ''effective immediately'' the nontax services were transferred to Law & Business, is that there would be some effect on the unit employees of this transfer. The impact on the unit employees was therefore present even though the mechanical aspects of the transfer may not yet have been worked out. The Union's concern in making the request was that Respondent might employ part-time unit employees in Law & Business who worked less than 20 hours per week in order to avoid paying them certain benefits.

The information sought concerning the number of part-time employees employed in Law & Business was clearly relevant to the Union's bargaining concerning part-time benefits. In view of the transfer which had already been made, the Union could expect that unit employees who were employed in nontax departments would be transferred to Prentice-Hall Law & Business. As such the Union could properly demand such information as the number of part-time employees employed in Law & Business. Respondent argues that inasmuch as Law & Business involved a completely separate unit at Prentice-Hall with no unit employees, and that since it told the Union at the bargaining session that it was not aware that bargaining unit work would be transferred or that there would be any erosion of the bargaining unit, it was relieved of any responsibility to furnish the information requested. I do not agree. The Union has established that such information is relevant to its bargaining, and I find that Respondent violated Section 8(a)(1) and (5) by not providing it to the Union. *E. I. du Pont & Co.*, 271 NLRB 1153, 1157 (1984).

The complaint also alleges that Respondent's refusal to furnish this information constitutes a separate violation of the Act, in addition to evidence of bad-faith bargaining. I agree. The Union need only show that its request for information was supported by a showing of ''probable'' or ''potential'' relevance. *NLRB v. Acme Industrial*, supra. The Union has made such a showing.

The Bad-Faith Bargaining Allegation

The complaint alleges that Respondent engaged in bad-faith bargaining by engaging in the conduct discussed above, and by its overall conduct.

Section 8(d) of the Act does not require either party in collective bargaining to agree to a proposal or to make a concession.

> The Board is not permitted, under the guise of finding bad faith, to require the employer to contract in a way which the Board deems proper, nor may the Board ''directly or indirectly compel concessions or otherwise sit in judgment upon the substantive terms of collective-bargaining agreements.'' *Commercial Candy Division*, 294 NLRB 908 (1989).

In surface bargaining cases, the important issue is whether the employer's ''approach to bargaining demonstrated an unyielding rigidity during negotiations that rendered collective bargaining a futility.'' *Commercial Candy Division*, supra. It is also necessary to examine the totality of the employer's conduct. *Atlanta Hilton & Tower*, 271 NLRB 1600 (1984).

I have found, as set forth above, that the making of certain proposals, in themselves, do not constitute violations of the Act. I also find that the content of the bargaining proposals here did not violate the Act. In *Reichhold Chemicals*, 288 NLRB 69 (1988), the Board stated that ''in some cases spe-

cific proposals might become relevant in determining whether a party has bargained in bad faith.'' Its standard in making this determination is whether ''on the basis of objective factors, a demand is clearly designed to frustrate agreement on a collective-bargaining contract.'' When examining such proposals, the Board ''strives to avoid making purely subjective judgments concerning their contents.'' *American Commercial Lines*, 291 NLRB 1066 (1988). Here, as set forth above, when viewed against the totality of the Respondent's conduct, it cannot be found that Respondent's proposals were designed to frustrate agreement.

In assessing such conduct, I note that Respondent attended each of the collective-bargaining sessions, and came fully prepared to bargain. It presented its proposals at the second meeting. During the negotiations, Respondent and the Union reached agreement on a number of issues including seniority, vacations, benefits, educational aid, union local officers, professional certification, holidays, probationary, period, and term of agreement.

In addition, Respondent's proposals, which General Counsel asserts violate the Act, were adequately explained to the Union and were discussed in detail at the negotiations. Moreover, Respondent requested the presence of a Federal mediator, who attended the two final sessions, and offered justification for its bargaining positions. As to Respondent's refusal to move from certain proposals, ''a party may stand firm by a bargaining proposal legitimately proferred.'' *Challenge-Cook Bros.*, 288 NLRB 387, 389 (1988). Here, there is no evidence that any of the disputed proposals were offered disingenuously or with an intent to frustrate agreement.

In addition, when agreement could not be reached on certain issues such as union stewards and professional certification, Respondent requested that the Union submit its proposed language on such clauses. After the Union did so, Respondent agreed to those modified proposals as drafted by the Union. Respondent also modified its wage proposal to provide for additional adjustments to wages as deemed necessary by it.

I accordingly conclude that the proposals discussed above, and the totality of Respondent's conduct during negotiations are indicative of lawful hard bargaining. *Logemann Bros. Co.*, 298 NLRB 1018 (1990). The evidence falls short of establishing unlawful surface bargaining. In addition, there was no evidence that Respondent's conduct away from the bargaining table was indicative of bad faith.

The unfair labor practice that I have found, the refusal to furnish information to the Union concerning the number of part-time employees employed by Prentice-Hall Law & Business, does not establish a finding of surface bargaining or overall bad-faith bargaining by Respondent. Rather, it is a discrete unfair labor practice, as alleged in the complaint.

The Impasse

The complaint alleges that on about June 2, 1988, Respondent implemented its final contract proposals in the absence of a valid impasse. Respondent asserts that at the final bargaining session on June 2, an impasse existed.

An employer violates its duty to bargain if, when negotiations are in progress, it unilaterally institutes changes in existing terms and conditions of employment. *NLRB v. Katz*, 369 U.S. 736, 741–743 (1962).

> The principal exception to this rule occurs when the negotiations reach an impasse. When impasse occurs, the employer is free to implement changes in employment terms unilaterally so long as the changes have been previously offered to the Union during bargaining. *Hayward Dodge*, 292 NLRB 434 (1989).

The Board has stated that ''whether a bargaining impasse exists is a matter of judgment. The relevant factors are the 'bargaining history, the good faith of the parties in negotiations, the importance of the issue or issues as to which there is disagreement, [and] the contemporaneous understanding of the parties as to the state of negotiations.''' *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967).

Applying the *Taft* principles here, I find that the parties reached impasse in their negotiations when, on about June 2, Respondent unilaterally implemented the terms of its last contract offer. In reaching this conclusion, I note that I have found that the evidence does not establish that Respondent had engaged in bad-faith or surface bargaining. In addition, this was not bargaining for an initial contract. Rather, the parties had entered into three prior collective-bargaining agreements, and find that Respondent negotiated here with an intention to reach an agreement.

During the negotiations, both parties recognized the importance of the wage issue. Respondent sought a merit system and the elimination of a guaranteed wage increase of 3 percent to those whose performance was unsatisfactory. The Union was opposed to a total merit pay system. Respondent rejected the Union's offers for a guaranteed wage increase for all unit employees. The Union's initial demand sought increases of 15 percent or $3500 per year for the first year of the contract, and 12 percent or $3000 per year for the second year.

At the January 28 session, the Union made a lower salary counteroffer which included a $2800 market adjustment for all employees hired before February 1987, a raise of the percentage merit increase from the expired contract, and a raise in the minimum increase from 3 to 6 percent. Respondent rejected that counteroffer as being too high.

At that session, Respondent made a counteroffer, proposing that adjustments to salary be made consistent with the merit system, in such frequency and in such amounts as decided by it. Respondent has termed this proposal as an opportunity to provide additional midterm salary adjustments.

At the April 6 session, the Union withdrew its January 28 offer and stated that its original demand, made at the first session, was still in effect.

On May 19, the Union made another salary offer, again demanding an across-the-board raise of 12 percent in the first and second years, and 11 percent in the third year. The Union also demanded a market adjustment of $700 per year for each year of service before 1987, with a cap of 10 years. Respondent answered that this offer would cause enormous increases to two specific employees, and that this latest offer was higher than the prior two.

There was no further movement on the salary issue. The Union, having withdrawn its May 19 offer, thereby had as its only open salary proposal the January 28 offer. Accordingly, no real movement had been made in salary discussions notwithstanding eight negotiation sessions, and a modification in position by Respondent.

The parties throughout these negotiations held apparently irreconcilable positions concerning the issue of salaries—Respondent insisting to the end on a total merit system, and the Union similarly demanding a guaranteed wage increase in some amount. Given these positions, the length of bargaining which produced no meaningful compromise, and the events at the last two sessions, there was no reason for either of the parties to reasonably believe that a continuation of discussions would have been fruitful. *Hayward Dodge*, supra.

I accordingly find that an impasse in contract negotiations occurred on June 2, 1988. I therefore find that Respondent permissibly unilaterally changed the terms and conditions of employment of its unit employees by implementing the terms of its last contract offer. These changes had been previously offered to the Union during the bargaining which led to the impasse. I find, therefore, that Respondent, having taken the unilateral action set forth above, did not thereby violate Section 8(a)(5) or (1) of the Act.

CONCLUSIONS OF LAW

1. Respondents Prentice-Hall, Inc. and Maxwell Macmillan Professional and Business Reference Division of Macmillan Information Company, Inc. are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Until 1989, the appropriate collective-bargaining unit consisted of:

> All Prentice-Hall Information Division Editors employed by the Employer in its Information Services Division, excluding all office clerical employees, production employees, managerial employees, guards, and supervisors as defined in the National Labor Relations Act, editorial assistants and all other employees.

From October 1989, the appropriate collective-bargaining unit is:

> All editors employed by the Maxwell Macmillan Professional and Business Reference Division at its Paramus, New Jersey facility, excluding all office clerical employees, production employees, managerial employees, guards, and supervisors as defined in the National Labor Relations Act, editorial assistants and all other employees.

4. At all times material, the Union has been the designated exclusive collective-bargaining representative of the units set forth above.

5. By refusing to furnish information to the Union concerning the number of part-time employees employed by Prentice-Hall Law & Business, Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

6. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. Respondent has not violated the Act in any other manner as alleged in the complaint.

THE REMEDY

Having found that the Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist and that it take certain affirmative action necessary to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondents, Prentice-Hall, Inc. and Maxwell Macmillian Professional and Business Reference Division of Macmillan Information Company, Inc., Paramus, New Jersey, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, by refusing to furnish information to the Union concerning the number of part-time employees employed by Prentice-Hall Law & Business.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Union with the requested information concerning the number of part-time employees employed by Prentice-Hall Law & Business.

(b) Post at its facility in Paramus, New Jersey, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondents has taken to comply.

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[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, by refusing to bargain collectively with District 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, by refusing to furnish information to the Union concerning the number of part-time employees employed by Prentice-Hall Law & Business.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union with the requested information concerning the number of part-time employees employed by Prentice-Hall Law & Business.

PRENTICE-HALL INC., AND MAXWELL MACMILLAN PROFESSIONAL AND BUSINESS REFERENCE DIVISION OF MACMILLAN INFORMATION COMPANY, INC.